

AMENDED IN ASSEMBLY MAY 14, 2002

AMENDED IN ASSEMBLY APRIL 17, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

## ASSEMBLY BILL

No. 3029

Introduced by Assembly Member Steinberg

March 12, 2002

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An act to amend Sections 1280 and 1281.6 of, and to add Sections 1281.89 and 1281.93 to, the Code of Civil Procedure, relating to arbitration.

### LEGISLATIVE COUNSEL'S DIGEST

AB 3029, as amended, Steinberg. Consumer arbitration agreements: private ~~judging~~ *arbitration* companies.

Existing law provides for the enforcement of arbitration agreements and requires a court to vacate an arbitration award in specified circumstances.

This bill would define attorney for a party, consumer arbitration, consumer party, neutral arbitrator, and private ~~judging~~ *arbitration* company for these purposes. The bill would specify that if a consumer arbitration agreement, entered into or renewed on or after January 1, 2003, designates one or more specific arbitrators or private ~~judging~~ *arbitration* companies or incorporates the arbitration rules of a private ~~judging~~ *arbitration* company, the consumer party shall have the option, *as specified*, after a dispute arises, to choose a different arbitrator or private ~~judging~~ *arbitration* company, and the arbitration agreement shall plainly notify the consumer of this right ~~in the arbitration clause~~, *as specified*, as well ~~of~~ as the right to obtain information about private

~~judging~~ *arbitration* companies, as specified. The bill would prohibit an arbitrator or private ~~judging~~ *arbitration* company from administering or otherwise participating in a consumer arbitration, unless the agreement complies with these requirements and the consumer chooses the arbitrator or private ~~judging~~ *arbitration* company after the dispute arises. The bill would also prohibit a private ~~judging~~ *arbitration* company from administering a consumer arbitration if, on or after January 1, 2003, it provides specified services or products to a party or attorney for a party to arbitration. The bill would specify the remedies for these violations.

The bill would also prohibit certain solicitations, as specified, regarding consumer arbitration cases, and prohibit a private ~~judging~~ *arbitration* company from making certain representations regarding consumer arbitration, adopting or enforcing specified rules governing consumer arbitration, or giving or receiving ~~renumeration~~ *remuneration* for referrals, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 1280 of the Code of Civil Procedure is
- 2 amended to read:
- 3 1280. As used in this title:
- 4 (a) “Agreement” includes but is not limited to agreements
- 5 providing for valuations, appraisals and similar proceedings and
- 6 agreements between employers and employees or between their
- 7 respective representatives.
- 8 (b) “Attorney for a party” includes any attorney actually
- 9 representing a party and any attorney currently associated in the
- 10 practice of law with an attorney hired to represent a party.
- 11 (c) “Award” includes but is not limited to an award made
- 12 pursuant to an agreement not in writing.
- 13 (d) “Consumer arbitration” means an arbitration *that is*
- 14 *binding on the consumer and* conducted under a predispute
- 15 arbitration provision contained in a contract that meets both of the
- 16 following criteria:
- 17 (1) The contract is with a “consumer party.”



(2) The arbitration provision is contained in a printed form agreement or was drafted by or on behalf of, or inserted by or on behalf of, the nonconsumer party.

(e) “Consumer party” means a party to an arbitration agreement who, for the purpose of that agreement, is any of the following:

(1) An individual who seeks or acquires, including by purchase, lease, or license, any goods or services primarily for personal, family, or household purposes, including financial services, insurance, and other goods and services, as defined in Section 1761 of the Civil Code.

(2) An individual who is an enrollee, a subscriber, or an insured under a health care service plan, within the meaning of Section 1345 of the Health and Safety Code, or a health care insurance plan, within the meaning of Section 106 of the Insurance Code.

(3) An individual with a medical malpractice claim that is subject to arbitration pursuant to a predispute arbitration agreement.

(4) An employee or applicant for employment in a dispute arising out of, or relating to, his or her employment or prospective employment, except a dispute under or arising out of a collective bargaining agreement between an employer and its employees or ~~between their respective representatives, and negotiated executive employment agreements providing an annual salary of more than one hundred fifty thousand dollars (\$150,000) per year. between~~ *their respective representatives.*

(f) “Controversy” means any question arising between parties to an agreement whether such question is one of law ~~or of fact~~, *of fact*, or both.

(g) “Neutral arbitrator” means an arbitrator who is selected or appointed by one of the following methods:

(1) Jointly by the parties or by the arbitrators selected by the parties.

(2) By the court when the parties or the arbitrators selected by the parties fail to select an arbitrator who was to be selected jointly by them.

(3) By a private ~~judging~~ *arbitration* company, under an agreement of the parties or applicable rules.

(h) “Party to the arbitration” means a party to the arbitration agreement:

1 (1) Who seeks to arbitrate a controversy pursuant to the  
2 agreement;

3 (2) Against whom such arbitration is sought pursuant to the  
4 agreement; or

5 (3) Who is made a party to such arbitration by order of the  
6 neutral arbitrator upon such party's application, upon the  
7 application of any other party to the arbitration or upon the neutral  
8 arbitrator's own determination.

9 (i) "Private ~~judging~~ *arbitration* company" means any  
10 nongovernmental entity or individual that holds itself out as  
11 managing, coordinating, ~~—administering or administering~~  
12 *arbitrations*, or providing the services of neutral arbitrators, or  
13 making referrals or appointments to, or providing lists of, neutral  
14 arbitrators. "Private ~~judging~~ *arbitration* company" includes any  
15 entity owned, in whole or in part, by any individual or affiliated  
16 with, a private ~~judging~~ *arbitration* company, but does not include  
17 entities or individuals that *administer*, make referrals or  
18 appointments to, or provide lists of arbitrators in, fewer than five  
19 consumer arbitration cases per year.

20 (j) "Written agreement" shall be deemed to include a written  
21 agreement which has been extended or renewed by an oral or  
22 implied agreement.

23 SEC. 2. Section 1281.6 of the Code of Civil Procedure is  
24 amended to read:

25 1281.6. (a) Except as provided in subdivision (b), if the  
26 arbitration agreement provides a method of appointing an  
27 arbitrator, that method shall be followed.

28 (b) If a consumer arbitration agreement entered into or  
29 renewed on or after January 1, 2003, designates one or more  
30 exclusive arbitrators or private ~~judging~~ *arbitration* companies, or  
31 incorporates the arbitration rules of a private ~~judging~~ *arbitration*  
32 company, the consumer party shall have the option, after a dispute  
33 arises, to choose a different arbitrator or private ~~judging~~ *arbitration*  
34 company, and the arbitration agreement shall plainly  
35 notify the consumer of this right ~~in the arbitration clause~~, as well  
36 as of the right to obtain information about private ~~judging~~ *arbitration*  
37 companies as provided by Section 1281.96 ~~in the~~  
38 *arbitration clause. This notice shall also be provided to the*  
39 *consumer party by the private arbitration company in the first*  
40 *communication from the private arbitration company to the*



1 *consumer party regarding the arbitration, and in the rules of*  
2 *procedure governing the arbitration. The option to choose a*  
3 *different arbitrator or private arbitration company may be*  
4 *exercised by the consumer party within 75 days from the date the*  
5 *nonconsumer party serves a demand for arbitration specifying an*  
6 *arbitrator or private arbitration company. No consumer*  
7 *arbitration may be self-administered by a party. No arbitrator or*  
8 *private ~~judging~~ arbitration company may administer or otherwise*  
9 *participate in a consumer arbitration unless the agreement*  
10 *complies with this subdivision and the consumer chooses the*  
11 *arbitrator or private ~~judging~~ arbitration company after the dispute*  
12 *arises. Any arbitration award rendered in violation of this section*  
13 *shall be vacated pursuant to Section 1286.2.*

14 (c) If the arbitration agreement does not provide a method for  
15 appointing an arbitrator, the parties to the agreement who seek  
16 arbitration and against whom arbitration is sought may agree on  
17 a method of appointing an arbitrator and that method shall be  
18 followed.

19 (d) In the absence of an agreed method, or if the agreed method  
20 fails or for any reason cannot be followed, or if an arbitrator  
21 appointed fails to act and his or her successor has not been  
22 appointed, the court, on petition of a party to the arbitration  
23 agreement, shall appoint the arbitrator.

24 (e) If a petition is made to the court to appoint a neutral  
25 arbitrator, the court shall nominate five persons from lists of  
26 persons supplied jointly by the parties to the arbitration or obtained  
27 from a governmental agency concerned with arbitration or a  
28 private disinterested association concerned with arbitration. The  
29 parties to the agreement who seek arbitration and against whom  
30 arbitration is sought may within five days of receipt of notice of  
31 the nominees from the court jointly select the arbitrator whether  
32 or not the arbitrator is among the nominees. If the parties fail to  
33 select an arbitrator within the five-day period, the court shall  
34 appoint the arbitrator from the nominees.

35 SEC. 3. Section 1281.89 is added to the Code of Civil  
36 Procedure, to read:

37 1281.89. (a) A solicitation regarding a consumer arbitration  
38 case may not be made by or on behalf of a private ~~judging~~  
39 *arbitration* company to any party, prospective party, or attorney  
40 for a party or prospective party, unless the solicitation is protected

1 from abridgment by the Constitution of the United States or by the  
2 Constitution of the State of California.

3 (b) For the purpose of this section, solicitation includes an oral  
4 or written request for arbitration business or any other  
5 communication concerning the availability for arbitration  
6 business in which a significant motive is pecuniary gain.

7 (c) A private ~~judging~~ *arbitration* company may not make any  
8 representation regarding consumer arbitration that promises or  
9 implies specific results or ~~that favors~~ *favoritism towards* one party  
10 or prospective party or one type of disputant or industry ~~over~~  
11 ~~another~~.

12 (d) A private ~~judging~~ *arbitration* company may not adopt or  
13 enforce any rule governing consumer arbitration that is  
14 inconsistent with any statement of principle, guideline, protocol,  
15 or other nonbinding policy representation *regarding consumer*  
16 *arbitration* made or adopted by the private ~~judging~~ *arbitration*  
17 company. A private ~~judging~~ *arbitration* company may not adopt  
18 any statement of principle, guideline, protocol, or other  
19 nonbinding policy statement regarding consumer arbitration that  
20 is inconsistent with the rules under which consumer arbitration is  
21 actually conducted or administered by the private ~~judging~~  
22 *arbitration* company.

23 (e) A private ~~judging~~ *arbitration* company may not give or  
24 receive any commission, rebate, or other remuneration for the  
25 referral of consumer arbitration cases, prospective consumer  
26 arbitration cases, consumer arbitration parties, or prospective  
27 consumer arbitration parties.

28 SEC. 4. Section 1281.93 is added to the Code of Civil  
29 Procedure, to read:

30 1281.93. (a) A private ~~judging~~ *arbitration* company may not  
31 administer a consumer arbitration if, on or after January 1, 2003,  
32 it has provided any paid or unpaid consulting, management, or  
33 other business service or product to any party to the consumer  
34 arbitration or to any attorney for a party in the arbitration, other  
35 than arbitration, mediation, or other ~~dispute resolution services.~~  
36 *methods of resolving specific, identified disputes. Nothing in this*  
37 *section prohibits a private arbitration company from conducting*  
38 *training programs regarding the arbitration process in general,*  
39 *provided that these programs do not create the appearance of a*  
40 *potential conflict of interest.*

1 (b) Any arbitration award rendered *in an arbitration*  
2 *administered by a private arbitration company* in violation of this  
3 section shall be vacated pursuant to Section 1286.2.

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